

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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RICHARD R. ROOKER, CLERK

STATE OF TENNESSEE, *ex rel.*
ROBERT E. COOPER, JR., ATTORNEY
GENERAL and REPORTER,

Petitioner,

v.

AOL LLC, a Delaware limited liability
corporation,

Respondent.

No. 07C1964

PETITION

The State of Tennessee, by and through Robert E. Cooper, Jr., the Attorney General, (hereinafter "Attorney General"), at the request of Mary Clement, Director of the Division of Consumer Affairs of the Department of Commerce and Insurance, files this Petition pursuant to Tenn. Code Ann. § 47-18-107 of the Tennessee Consumer Protection Act of 1977 (hereinafter "the Act"), and respectfully shows the Court as follows:

1. The Attorney General, acting pursuant to the Act, has investigated certain acts and practices of AOL LLC, a Delaware limited liability company (hereinafter "Respondent" or "AOL"). Upon completion of such investigation, the Attorney General has determined that certain of Respondent's acts and practices, more specifically described in Paragraph 2 of this Petition, constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of the Act.

2. As a result of the investigation, the Division and the Attorney General allege that certain acts and practices of Respondent were in violation of the Tennessee Consumer Protection Act of 1977, Tenn Code Ann. § 47-18-101, *et seq.* as follows:

a. AOL, a Delaware limited liability company with its principal place of business at 22000 AOL Way, Dulles, Virginia 20166, has provided Internet-related services for more than twenty years. AOL currently has approximately twelve million paying Members nationwide.

b. Historically, AOL's primary service has been dial-up Internet access, typically offered through a "free trial" offer that requires that the Member cancel the account prior to the end of the free trial period to avoid a monthly membership fee.

c. Since 1998, AOL has provided Members three methods of cancellation: phone, facsimile or mail. Most cancellation requests are made by phone, which results in the Member being directed to an AOL Member Service employee, who is trained to assess whether the Member has an issue that can be resolved short of cancellation. A Member who subsequently decides not to cancel his or her account is considered "saved" by AOL. Historically, AOL has provided incentives to employees for "saving" Members in the form of bonus compensation that, until 2005, depended on the employee retaining a minimum threshold percentage of calls handled.

d. The State has received complaints from consumers who have claimed difficulty in attempting to cancel their AOL Internet services. Some of these consumers state that they have contacted AOL Member Services by telephone, canceled their service, and yet subsequently received a monthly Internet service bill from AOL or had funds deducted from their bank accounts.

e. Even after a consumer has successfully canceled an AOL account, the AOL software continues to reside on the consumer's computer unless the consumer deletes it. This enables a former Member, whose account was previously canceled to easily "reactivate" his or her account by simply signing on to AOL using the Master Account's screen name and password and authorizing reactivation of the account, subject to the AOL Terms of Service and resumption of billing to the payment method on file with AOL. This reactivation process has not always enabled Members to review material terms and conditions prior to reactivation. Some consumers complaining to the Attorneys General alleging post-cancellation billing by AOL have, in some instances, inadvertently reactivated their accounts in this manner.

f. AOL has always enabled Members to maintain multiple screen names, also known as "Sub-accounts," for one AOL Master Account. In response to technical issues which prevented the simultaneous log-on of Sub-accounts, AOL developed the ability for Members to create or "spin-off" new accounts using one of the Member's Sub-accounts. Thus, a Spin-off account allowed for simultaneous log-ons, as well as the ability to separate an otherwise single Internet account (*e.g.*, business account versus home account). These Spin-off Accounts are not free, and are billed separate from and independent of the prior Master Account. Historically, AOL marketed Spin-off Accounts to its Members. Some consumers complaining to the Attorneys General that confusion exists in attempting to cancel all AOL Paid Member Accounts. This confusion stems from consumers not understanding the implications of having created a Spin-off Account, and therefore, despite canceling a Master Account, continuing to be billed for Spin-off Accounts previously created during their membership with AOL.

g. AOL allows its Members to be billed for its services directly to a Member's local telephone bill. Some consumers have alleged unauthorized AOL charges on their monthly telephone bills. Still other consumers have complained that they were improperly assessed charges on their telephone bill for services after having previously canceled their Paid Member Account.

h. The State alleges that these acts, practices, and omissions have violated and continue to violate the consumer protection act. Specifically, the State alleges that such violations have occurred in that AOL:

i. Misrepresents that consumers who have attempted to cancel their Paid Member Accounts with AOL have authorized AOL to continue charging those consumers for services;

ii. Misrepresents that consumers have authorized AOL to reactivate accounts that have been previously canceled;

iii. Fails to Clearly and Conspicuously disclose the existence of, and material terms and conditions associated with, accounts for AOL services; and

iv. Misrepresents that consumers have authorized charges to their consumer telephone service bills.

3. The Division requested the Attorney General to negotiate, and if possible to accept, an Assurance of Voluntary Compliance in accordance with the provisions set forth in Tenn. Code Ann. § 47-18-107.

4. The parties have agreed to, and the Division has approved, the Assurance of Voluntary Compliance filed contemporaneously herewith.

5. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

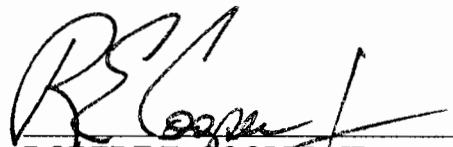
6. The Division, the Attorney General, and the Respondents have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays:

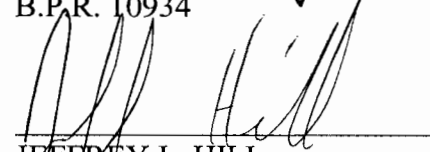
1. That this Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.

2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Tennessee Consumer Protection Act.

Respectfully submitted,



ROBERT E. COOPER, JR.
Attorney General & Reporter
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